

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2541 of 1997

BHUPATBHAI B KARAPADA

Versus

STATE OF GUJARAT

Appearance:

MR JT TRIVEDI for Petitioners

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 09/05/97

ORAL ORDER

This Special Civil Application has been filed against the orders dated 23.5.1996 and 28.10.1996 passed by the Assistant Labour Commissioner, Surendranagar whereby he has declined to make a reference on the ground that the dispute was raised after a period of nearly ten years from the date of their termination from the services. It has been argued on behalf of the petitioners that while considering the question as to whether the reference should be made or not, the appropriate Government cannot reject the reference on the ground of delay. Learned Counsel has placed reliance on 1996(2) UJ 10 and 11 i.e. the decision rendered by the Division Bench of this Court in Letters Patent Appeal No. 744 of 1995 dated 20.8.1996. The Division Bench was concerned with a case in which the services were terminated on 31.7.1986 by an oral order and the petitioner had approached the Assistant Labour Court in July, 1990 i.e. after a period of four years. The Central Government vide its order dated 11.9.1991 denied the reference. The petitioner in that case then approached this Court through Special Civil Application No. 227 of 1994 seeking direction for making a reference to the Industrial Tribunal. The Special Civil Application was dismissed in limine on the ground that the petitioner was dismissed from services in the year 1986 and the dispute was raised some time in the year 1990 though the reference was denied in 1991. The Special Civil Application was instituted at a belated stage. The Division Bench while dealing with the Letters Patent Appeal considered the grievance that the Government could not have gone into the merits of the case so as to reject the reference and that it was not

open to the appropriate Government while deciding the question of reference u/s.10(1)(d) to go into the merits of the matter. The Division Bench while considering this grievance noted that the Desk Officer had passed an order rejecting the reference on merits as the order was to the following effect :

"since the termination of service of the workman was under a stipulation in the contract of employment, the termination would not be a retrenchment under the provisions of the Industrial Disputes Act."

No doubt the Division Bench has observed in the later part of the order that there was no limitation prescribed for seeking reference under the Industrial Disputes Act and though there is a delay as held by the learned Single Judge the Division Bench felt satisfied that the appellant was employed in small job of handyman and in that view of the matter, deserves some consideration. The Division Bench also noticed the statement made on behalf of the appellant's counsel that in case the Tribunal decides the reference in favour of the appellant, the appellant would not claim backwages and he would be content with wages from the date of his reinstatement. For the reasons as aforesaid the appeal was allowed and the order dated 11.9.1991 made by the Desk Officer and the order of the learned Single Judge in Special Civil Application No. 227 of 1994 dated 15.2.1996 was quashed and set aside and a direction was issued to make a reference. Having cited the aforesaid decision dated 20.8.1996 of the Division Bench, the learned Counsel for the petitioner submitted that the present petitioners were daily wagers and he was also prepared to make a statement to forgo the claim of backwages as was done in the case before the Division Bench.

I have considered the submissions made on behalf of the petitioners and find that this case as decided by the Division Bench cannot be of any help to the petitioners herein because in any case before the Division Bench, the Desk Officer had actually rejected the request for making a reference by passing an order on merits. The Desk Officer ordered that the termination was under a stipulation in the contract of employment and such termination would not be a retrenchment. It was not a case in which the reference was rejected on the ground of delay of four years in raising the dispute but a clear cut decision on merits by the Desk Officer. Moreover it may be pointed out that the Division Bench had decided

this case on 20.8.1996 and earlier decision rendered by the Single Bench of this Court in Special Civil Application No. 8245 of 1995 decided on 31.1.1996 and reported in 1996(2) GLH pg.149 [Hassam Noor Mohmed Vs. State of Gujarat & Others] was not cited before the Division Bench. In Hassam Noor Mohmed's case (Supra) while placing reliance on more than one decisions rendered by the Supreme Court a considered view was taken that it was open for the appropriate Government to decline to make a reference in case the claim sought to be agitated is found to be belated. This view was based on AIR 1960 SC P.1223 [State of Bombay Vs. K.P.Krishnan], AIR 1964 SC P.1617 [Bombay Union of Journalists Vs. State of Bombay], AIR 1987 SC P.695 [V.Veerrajan & Others Vs. Government of Tamil Nadu], AIR 1990 SC P.255 [Jitendra Nath Biswas Vs.M/s.Empire of India & Ceylone Tea Co. & Anr]. For the reasons aforesaid, the Division Bench decision on which the reliance has been placed by the learned counsel for the petitioner cannot be of any assistance to him. In Hassam Noor Mohmed's case (Supra) earlier unreported decision of this Court in Special Civil Application No. 3470 of 1995 decided on 29.9.1995 had also been considered and the decision of the Madras High Court on which the reliance was placed by the learned counsel for the petitioner i.e. 1969 Lab.I.C.1484 (Madras) in case of Madras District Automobile and General Employees' Union vs. State of Madras has also been considered. Thus the contention raised on behalf of the petitioner that the appropriate Government may reject the reference on the ground of delay is not at all tenable. Delay of ten years in raising the dispute in the case at hand has been sought to be disputed by the petitioners before this Court by

setting up a case that on 1.1.96 when they went on work they were told orally that their services were no longer required. This submission has no basis and it is stated in the order dated 23.5.96 itself that they had lastly worked in 1985. Petitioners have also not given any account for the period 1985 to 1996. This submission therefore can't be entertained. The Assistant Labour Commissioner, Surendranagar has also referred to the judgment of the Supreme Court in Civil Appeals No. 852/89 and 472/89 decided on 21.8.1991.

For the reasons aforesaid, I do not find any illegality in the impugned orders passed by the Assistant Labour Commissioner, Surendranagar rejecting the request for making a reference after a period of ten years from

the date of termination of the services. Because the principle of reasonable period applies whether the Limitation Act applies or not and the Division Bench decision in Letters Patent Appeal No. 744 of 1995 cannot come to the rescue of the petitioner for the reasons that in that case the request for reference had been rejected by the appropriate Government on the basis of the merits of the case, in that case the dispute was raised in the year 1990 with regard to the termination of 1986 whereas in this case there is delay of ten years and the making of the reference has not been refused on merits by the appropriate Government. I do not find any merit in this Special Civil Application and the same is hereby dismissed.

Date :9.5.1997. [M.R.Callan,J]

m.m.bhatt.